

## Federal Communications Commission

DA98-2243

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations.  
(East Brewton, Alabama and  
Navarre, Florida)

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) MM Docket No. 97-233  
) RM-9162  
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**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: October 28, 1998

Released: November 6, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making ("Notice") in this proceeding, 12 FCC Rcd 19469 (1997). 550-AM and Root Communications Group, L.P. ("Root Communications") filed Comments and Reply Comments.<sup>1</sup> For the reasons discussed below, we are denying the proposal set forth in the Notice.

Background

2. At the request of 550-AM ("Petitioner"), permittee of Station WGCX, Channel 239A, East Brewton, Alabama, the Notice proposed the substitution of Channel 239C3 for Channel 239A, at East Brewton, Alabama, the reallocation of Channel 239C3 to Navarre, Florida, and the modification of Station WGCX's authorization accordingly. This reallocation proposal was filed pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>2</sup>

3. In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982). In making this evaluation, we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995). The Notice requested comment on this proposed reallocation. The Notice also observed that we could not

<sup>1</sup> 550-AM also filed a Motion to Dismiss directed to the Comments filed by Root Communications. Root Communications claims that, due to an administrative error, it did not serve 550-AM a copy of its Comments until two days after the comment due date in this proceeding. It does not appear that 550-AM has been prejudiced by this untimely service. Further, we believe that the public interest would be served by considering the Comments and resolving this proceeding on the basis of a complete record. Therefore, we deny 550-AM's motion.

<sup>2</sup> See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License") 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

determine whether Navarre was, in fact, a community to which an FM channel could be allotted. For this reason, we requested that the petitioner provide additional information that would enable us to make this determination.

#### Pleadings and Discussion

4. Root Communications, licensee of Station WRBA(FM), Springfield, Florida, filed Comments in opposition to the proposed reallocation. In its Comments, Root Communications contends that Navarre does not have the necessary indicia to qualify as a community for allotment purposes. It observes that it has been unable to determine the population of Navarre. Root Communications states that, in discussions with the staffs of the Navarre Beach Chamber of Commerce (which it notes is the only local chamber of commerce) and the local branch of the West Florida Regional Library System, neither staff could provide a population figure for Navarre, although they both indicated that the population of the Navarre Beach area was about 18,000 persons. Root Communications argues that this fact indicates that the residents of Navarre consider themselves to be residents of an "area" and not a community with distinct characteristics. It also contends that Navarre is not a community because, inter alia, it does not have a post office or any governmental structure such as a town council and mayor, does not have its own police force or hospital, does not have any civic organizations, and that schools are provided by the Santa Rosa County School system, while the local library is part of the West Florida Regional Library System. Lastly, Root Communications claims that Navarre's lack of distinct community characteristics is analogous to cases in which the Commission determined that a location did not have community status, citing Hawthorne, Wisconsin, 12 FCC Rcd 20142 (Allocations Br. 1997) ("Hawthorne") and Amelia, Louisiana, 12 FCC Rcd 13930 (Allocations Br. 1997) ("Amelia").

5. In response to the Notice's request for further information demonstrating that Navarre is a "community" for allotment purposes, Petitioner's Comments includes as Exhibit 1 "a portion of a map provided by the chamber of commerce where what would be considered the community of Navarre is outlined in heavy black marker." Exhibit 2 to those Comments is a membership list for the Navarre Beach Area Chamber of Commerce, including addresses for each member. Petitioner notes that most of the businesses on the 26-page list are located in Navarre. Exhibit 4 to Petitioner's Comments includes photographs of the new Navarre post office that was opened in 1997, Navarre News (local newspaper), Navarre High School, and the Navarre Community Center and Public Library. Petitioner also notes that Navarre has several civic organizations, including a local Elks Lodge, Navarre YMCA, Navarre Youth Sports Association, Garden Club, Rotary Club and Friends of the Navarre Community Library. Petitioner explains that, in addition to the daily newspaper entitled "Navarre News," Navarre has a weekly newspaper entitled "Navarre Sun." Further, in response to Root Communications' assertion that Navarre has no hospital, Petitioner notes that the existence of a hospital in a community does not determine if a community is eligible for a channel allotment. Nevertheless, Petitioner observes that a hospital is being constructed in Navarre and that the Navarre Family Medicine Center, Navarre Family Eye Care and Navarre Family Dentistry are three medical facilities presently located within Navarre. In response to Root Communications' argument that Navarre is not a community because it does not provide its own schools, Petitioner responds that many towns have schools within their boundaries that are part of a county-wide system and that county systems save taxpayers money. As to Root Communications' claim that Navarre is not a community because it does not have its own police force and relies on Santa Rosa County for police protection, we note that many communities receive police protection and other governmental services from the county in which they are located. See, e.g., Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments (Semora, North Carolina), 5 FCC Rcd 934 (1990) ("Semora"). In view of the above, Petitioner has demonstrated that Navarre is a recognized community with many local businesses, a post office, two newspapers, several local civic and social organizations, churches, and schools.

6. We agree with Petitioner that the cases *Root Communications* cites as precedents for finding that Navarre does not constitute a community, namely, *Amelia* and *Hawthorne*, *supra*, are not applicable to the case before us. First of all, *Amelia* differs from the case before us in several ways. For example, *Amelia* states that the proposed community of license had no local government, police, library, newspaper, churches, social organizations or schools. The fact that the people of Navarre receive police protection and public education services from Santa Rosa County and library services from West Florida Regional Library System, does not mean that Navarre cannot qualify as a "community." See, e.g., *Seven Locks Broadcasting Co.*, 37 FCC 82, 84 (1964) and *Semora*, *supra*. It should be noted that four public schools listed in Petitioner's Exhibit 6 to its Reply Comments are located in Navarre. Further, Navarre has two newspapers and several clubs, social organizations, and churches. In contrast, the proposed community of license in *Amelia* was credited with only eight retail establishments, whereas Exhibit 2 of Petitioner's Comments demonstrates the existence of more than 120 retail establishments with Navarre street addresses. *Hawthorne* can be distinguished from the case before us by several significant facts, including the scarcity of people (population of 100) and businesses (the rulemaking proponent listed seven businesses and gave no local addresses for those businesses) in the proposed community of license.

7. The parties' pleadings do not resolve the controversy as to the population of Navarre. In this regard, we first note that the 1998 *Rand McNally Commercial Atlas and Marketing Guide* ("*Atlas*") lists Navarre as having a population of 900 and the nearby town of Holley as having 300 persons. A small community apparently adjacent to Navarre called "Navarre Beach," is not listed in the *Atlas*. For that matter, the 1990 U.S. Census does not list "Navarre," "Navarre Beach," or "Holley." Navarre is not an incorporated town. Nevertheless, if Navarre had a recognized population of 1,000 or more, the U.S. Census would list it as a "Census Designated Place" or "CDP."<sup>3</sup> There is no such listing. Although Petitioner claims that there were 9,178 registered voters who voted in the 1996 general election and who resided in voting districts within the area marked as "Navarre" on the map it submitted in Exhibit 1 of its Reply Comments, no governmental entity such as Santa Rosa County has verified Petitioner's assertion that a town or community known as "Navarre" has 9,178 voters or any specific number of voters or people. Although Petitioner claims that the Navarre Beach Chamber of Commerce estimates that the population of the Navarre Beach area is about 18,000, Petitioner has not submitted any official governmental statement as to the population of a town or community called "Navarre," and even the local chamber of commerce has told Petitioner that it cannot determine the population of "Navarre." In these circumstances, the only source of information upon which we can rely is the *Atlas*, which states that the population of Navarre is 900. In light of the above, we conclude that Navarre qualifies as a "community" with a population of approximately 900 people to which an FM Channel may be allotted.

8. Since Navarre, Florida, qualifies as a "community," Petitioner's reallocation proposal requires us to compare the existing allotment to East Brewton, Alabama, with the proposed allotment to Navarre, Florida, to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in *FM Priorities*, *supra*. In making this evaluation, we consider the "totality of factors". See *LaGrange and Rollingwood, Texas*, *supra*. In this regard, the existing allotment to East Brewton, Alabama, would provide the first local transmission service to that town, which has a population of 2,579, whereas allotting a new FM channel to Navarre, Florida, would provide that community, which has a population of 900, with its first local transmission service. Since East Brewton has a greater population than Navarre, the larger community of East Brewton is the preferred allotment. In making this determination, we realize that, operating with maximum facilities, the proposed Channel 239C3 allotment at Navarre would serve 316,060 persons in an area of 4,802.9 square

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<sup>3</sup> See Bureau of the Census, U.S. Dep't. of Commerce, Pub. No. 1990 CPH-2-11 *1990 Census of Population and Housing, Florida*, pp. A9-10.

kilometers (1,855.2 square miles), while the Channel 239A allotment at East Brewton would serve 26,858 persons in an area of 2,516 square kilometers (971.8 square miles). However, the entire area that would be served by a Channel 239C3 allotment at Navarre already receives at least seven aural services and is considered to be adequately served. In contrast, the existing East Brewton allotment would provide a fifth reception service to 7,011 persons in a service area of 746.8 square kilometers (288.5 square miles). Since the reception of five aural signals is considered to be adequate service, the East Brewton allocation would provide a significant public interest benefit by providing a fifth reception service to a substantial area and population. Considering the totality of factors in this case, the existing allotment to East Brewton must be viewed as superior to the proposed allotment to Navarre, because the existing allotment would provide a first local service to more people than the requested allotment to Navarre, Florida, and would also provide a fifth reception service to 7,011 persons. In these circumstances, Petitioner's requested reallocation of Station WGCX from East Brewton, Alabama to Navarre, Florida must be denied.

9. Accordingly, IT IS ORDERED That 550-AM's petition for rulemaking IS DENIED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
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